

UBER, III - 09/939,656
Client/Matter: 071419-0265228

REMARKS

Claims 13, 67, 72, and 82 are amended hereby. Claims 92-94 are added. No claims have been canceled. Accordingly, after entry of this amendment, claims 13-18 and 63-94 will remain pending.

In the Non-Final Office Action dated April 29, 2004, the Examiner rejected claims 13-18, 64-67, 69, and 72-80 under 35 U.S.C. § 102(e) as anticipated by Pattillo et al. (U.S. Patent No. 4,937,194). Claims 13-16, 64, 65, 66, 69, 72-75, 78, and 79 were rejected under 35 U.S.C. § 102(b) as being anticipated by Roberts (U.S. Patent No. 4,754,786). In addition, claims 13-18 and 63-91 were rejected under 35 U.S.C. § 103(a) as unpatentable over Thompson et al. (U.S. Patent No. 4,710,166) and Wortrich (U.S. Patent No. 4,750,643). The Applicant respectfully disagrees with each of the rejections and, therefore, respectfully traverses same.

Independent claims 13, 72, and 82 have been amended to recite an apparatus combining a number of elements including, for example, at least one per-patient disposable portion with a first end connected to the reusable portion and a second end connectable to a patient. None of the references relied upon by the Examiner to reject the claims disclose or suggest an apparatus that incorporates at least this feature. As a result, the Applicant respectfully submits that the independent claims are patentable thereover. Moreover, since the claims that depend from independent claims 13, 72, and 82 recite further features, they are distinguishable from the references for the additional reasons recited thereby. As a result, the Applicant respectfully submits that all of claims 13-18 and 63-94 are patentable over the references cited by the Examiner.

The Applicant respectfully submits that Pattillo et al. does not anticipate any of claims 13-18 and 63-94. Pattillo et al. describes a method for metering nutrient media to cell culture containers. Specifically, a predetermined-volume aliquot of nutrient media may be removed

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from bag 10 and flow through conduit 14 into the burette 36. (Partillo et al. at col. 5, lines 43-45.) After the aliquot is drawn into the burette 36, the user may manipulate the three-way valve 32, thereby causing the aliquot to flow into the portion 14a of the conduit 14, which is downstream from the branch conduit 34, to fill the bag 12. (Partillo et al. at col. 5, lines 45-50.) As illustrated in Fig. 5, Partillo et al. shows that several bags 134a may be filled with media from the nutrient media container 10b and also from the serum container 142b. (Partillo et al. at col. 8, lines 35-46 and at col. 9, lines 5-12.)

Contrary to the Examiner's assertion, at no point does Partillo et al. discuss that the downstream portion 140 is reusable. In addition, no where does Partillo et al. state that each of the bags 134a are intended for individual patients. Also, Partillo et al. does not disclose that any portion of the system described is connectible to a patient. It appears that the Examiner has interpreted the structures in a manner that does not appear to be consistent with the discussion in Partillo et al. Moreover, it appears that the Examiner has applied hindsight impermissibly to the interpretation of the structure described in Partillo et al. and, thereby, has used the Applicant's disclosure against the Applicant. Finally, the Applicant respectfully submits that Partillo et al. is directed to the delivery of metered nutrient media to a cell culture container, not to an apparatus for delivering fluid to multiple patients.

Since Partillo et al. does not describe each and every feature of the claims, it cannot anticipate claims 13-18 and 63-94. Accordingly, the Applicant respectfully submits that the claims are patentable thereover.

Claims 13-18 and 63-94 also are patentable over Roberts, which describes a sterile fluid storage and dispensing apparatus and a method for filling same. Roberts, however, does not discuss an apparatus for delivering fluid to multiple patients that combines a number of elements including at least one disposable portion with a first end connected to a reusable portion of the apparatus and a second end connectable to a patient. As a result, like Partillo et

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al., Roberts does not describe each and every feature recited by claims 13-18 and 63-94 and, as a result, cannot anticipate those claims.

In dramatic contrast to the present invention, the bags 10 described in Roberts may be used to dispense fluid via the chain of dispensing elements 25 connected thereto, using one dispensing element at a time in sequential order. (Roberts at col. 7, lines 27-47.) However, at the very least, nothing in Roberts suggests that the fluid path is disposed between the fluid sources and the patient, as recited by the claims. Accordingly, the Applicant respectfully submits that Roberts does not anticipate any of claims 13-18 and 63-94.

The Applicant also respectfully submits that claims 13-18 and 63-94 are patentably distinguishable over the combination of Thompson et al. and Worrich. Neither of these references suggests the invention as claimed. As a result, the Applicant respectfully submits that the references do not render any of claims 13-18 and 63-94 obvious.

As the Examiner recognized, one failing of Thompson et al. is the failure to discuss reusable and disposable portions of the fluid path. Worrich does not assist the Examiner with this rejection because the entire system described by Worrich is disposable. (See the first three words in the Abstract for Worrich.) While the administration sets 51 are connected to the remainder to the apparatus during use, the entirety of the system is intended to be thrown away. There is no portion that is reusable. Accordingly, if the references were combined, they would not teach the invention as claimed. As a result, the Applicant respectfully submits that the claims are patentable over the combination.

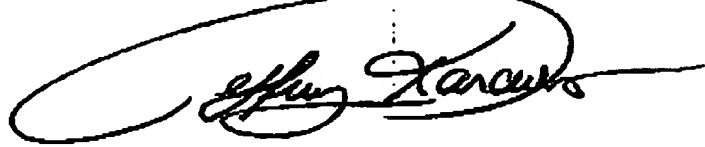
Each of the rejections having been addressed, the Applicant respectfully requests the withdrawal of the rejections under 35 U.S.C. §§ 102 and 103 and a rapid allowance of this application as a United States Patent.

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If there are any fees due for entry of this submission that are not otherwise accounted for, the Applicant asks that any such fees be charged to our Deposit Account No. 03-3975, with reference to Order No. 071419/0265228.

Respectfully submitted,

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